

MT LEGISLATIVE HISTORY

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Chapter 551 1987

Bill H 661 S _____

Original bill & hist. ✓ C

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s) _____ C

Hearing Date(s) _____ C

2/13 ✓ C

3/23 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out 2/13 ✓ C

3/25 ✓ C

Did this bill originate in an interim committee? ____ Yes X No

Committee _____

Report _____

HOUSE BILL NO. 661

INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

IN THE HOUSE

FEBRUARY 7, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 16, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1987	PRINTING REPORT.
FEBRUARY 18, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1987	ENGROSSING REPORT.
FEBRUARY 21, 1987	THIRD READING, PASSED. AYES, 91; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 26, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 661
 2 INTRODUCED BY Spartz E. Smith Beach Cody
 3 Hanning McLean Hoff Barr Liore Boyle
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
 5 TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
 6 ALTERATION, MODIFICATION, OR DIVERSION OF A STREAM TO
 7 PROVIDE FOR IRRIGATION; AMENDING SECTION 75-7-103, MCA; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 75-7-103, MCA, is amended to read:
 12 "75-7-103. Definitions. As used in this part, the
 13 following definitions apply:
 14 (1) "Applicant" means any person presenting notice of
 15 a project to the supervisors.
 16 (2) "Department" means the Montana department of fish,
 17 wildlife, and parks.
 18 (3) "District" means a conservation district under
 19 Title 76, chapter 15, in which the project will take place;
 20 a grass conservation district under Title 76, chapter 16,
 21 where no conservation district exists, or the board of
 22 county commissioners where a district does not exist.
 23 (4) "Person" means any natural person, corporation,
 24 firm, partnership, association, or other legal entity not
 25 covered under 87-5-502.

1 (5) (a) "Project" means a physical alteration or
 2 modification of a stream in the state of Montana which
 3 results in a change in the state of the stream in
 4 contravention of 75-7-102.

5 (b) Project does not include an alteration,
 6 modification, or diversion of a stream for the purpose of
 7 providing for irrigation if the alteration, modification, or
 8 diversion is consistent with the previous historical action
 9 or usage at the point of diversion.

10 (6) "Stream" means any natural perennial-flowing
 11 stream or river, its bed and immediate banks.

12 (7) "Supervisors" means the board of supervisors of a
 13 conservation district, the directors of a grass conservation
 14 district, or the board of county commissioners where a
 15 proposed project is not within a district.

16 (8) "Team" means one representative of the
 17 supervisors, one representative of the department, and the
 18 applicant or his representative."

19 NEW SECTION. Section 2. Extension of authority. Any
 20 existing authority of the board of natural resources and
 21 conservation and the supervisors as provided in 75-7-103 to
 22 make rules on the subject of the provisions of this act is
 23 extended to the provisions of this act.

24 NEW SECTION. Section 3. Effective date. This act is
 25 effective on passage and approval.

-End-

-2-

INTRODUCED BILL
 HB-661

1 STATEMENT OF INTENT

2 HOUSE BILL 661

3 Senate Natural Resources Committee
4

5 A statement of intent is required for this bill in
6 order to clarify that the board of natural resources and
7 conservation and boards of supervisors of conservation
8 districts may revise their rules as necessary. Section 2
9 clarifies that boards of supervisors are authorized to
10 establish standards and guidelines for projects and
11 exclusions within their districts for matters not covered by
12 the minimum standards and guidelines established by the
13 board of natural resources and conservation. Section 2 also
14 provides authorization to adopt rules identifying repair and
15 maintenance activities that are not "projects", as that term
16 is defined in 75-7-103, because the activities do not
17 significantly alter a stream. Section 2 further authorizes
18 rulemaking to identify the following:

- 19 (1) categories of information that should be included
20 in plans of annual operation;
21 (2) procedures for filing the plans; and
22 (3) procedures for evaluation and board of supervisor
23 decisions concerning the plans.

HOUSE BILL NO. 661

INTRODUCED BY SPAETH, E. SMITH, BECK, CODY,
HARRINGTON, GLASER, THOFT, BRANDEWIE, BOYLAN,
HIRSCH, BLAYLOCK, GIACOMETTO, WEEDING, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER DEFINING THE
TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE AN
~~ALTERATION,--MODIFICATION,--OR--DIVERSION--OF--A--STREAM--TO~~
~~PROVIDE-FOR-IRRIGATION~~ MAINTENANCE AND REPAIR OF EXISTING
IRRIGATION FACILITIES; AMENDING SECTION SECTIONS 75-7-103
AND 75-7-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the
following definitions apply:

(1) "Applicant" means any person presenting notice of
a project to the supervisors.

(2) "Department" means the Montana department of fish,
wildlife, and parks.

(3) "District" means a conservation district under
Title 76, chapter 15, in which the project will take place;
a grass conservation district under Title 76, chapter 16,
where no conservation district exists, or the board of

county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation,
firm, partnership, association, or other legal entity not
covered under 87-5-502.

(5) (a) "Project" means a physical alteration or
modification of a stream in the state of Montana which
results in a change in the state of the stream in
contravention of 75-7-102.

(b) Project does not include ~~an--alteration,~~
~~modification,--or--diversion--of--a--stream--for--the--purpose--of~~
~~providing-for-irrigation-if-the-alteration,--modification,--or~~
~~diversion--is-consistent-with-the-previous-historical-action~~
~~or-usage-at-the-point-of-diversion;~~ CUSTOMARY AND HISTORIC
MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES;

(I) THAT DO NOT SIGNIFICANTLY ALTER OR MODIFY THE
STREAM IN CONTRAVENTION OF 75-7-102, ~~AS--DETERMINED--BY--THE~~
~~TEAM SUPERVISORS; OR~~

(II) FOR WHICH ~~AN--ANNUAL--PLAN--OF~~ A PLAN OF ANNUAL
OPERATION HAS BEEN SUBMITTED TO AND APPROVED BY THE
DISTRICT. THE PLAN IS SUBJECT TO FUTURE REVIEW AND APPROVAL
BY THE DISTRICT AT ITS OPTION. ANY MODIFICATION TO THE PLAN
MUST HAVE PRIOR APPROVAL OF THE DISTRICT.

(6) "Stream" means any natural perennial-flowing
stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a

conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or his representative."

SECTION 2. SECTION 75-7-117, MCA, IS AMENDED TO READ:

"75-7-117. Rules -- minimum standards. (1) ~~By July 17 1975--the~~ The board of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.

(2) ~~By January 17 1976--the~~ The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines for projects, and exclusions, within their districts which ~~shall meet or, exceed, or are not covered by~~ the minimum standards set by the board under subsection (1)."

NEW SECTION. Section 3. Extension of authority. Any existing authority of the board of natural resources and conservation and the supervisors as provided in 75-7-103 to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

-End-

MINUTES OF THE MEEITNG
NATURAL RESOURCES COMMITTEE
HOUSE OF REPRESENTATIVES
50TH LEGISLATIVE SESSION
1987

<u>Committee Members</u>	<u>District</u>
Rep. Tom Jones, Chairman	4
Rep. Clyde Smith, Vice Chairman	5
Rep. Kelly Addy	94
Rep. Tom Asay	27
Rep. John Cobb	42
Rep. Ben Cohen	3
Rep. Ed Grady	47
Rep. John Harp	7
Rep. Hal Harper	44
Rep. Mike Kadas	55
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Mary Lou Peterson	1
Rep. Bob Raney	82
Rep. Rande Roth	96
Rep. Angela Russell	99
Rep. Bruce Simon	91
Rep. Bill Strizich	41

SECRETARY

Lisa Routzhan

Staff

Hugh Zackheim, EQC

50th LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
408	1/30/87	1/30/87	2/2/87	2/2/87							
416	2/2/87	2/2/87	2/11/87			2/11/87					
453	2/2/87	2/2/87	2/6/87	2/6/87							
467	2/2/87	2/2/87	2/2/87			2/2/87					
534	2/4/87	2/4/87	2/9/87			2/9/87					
616	2/9/87	2/9/87	2/11/87		2/11/87						
629	2/11/87	2/11/87	2/13/87	2/13/87							
631	2/11/87	2/11/87	2/13/87	tabled							
642	2/13/87	2/13/87	2/18/87			2/18/87					
645	2/16/87	2/16/87	2/20/87			2/20/87					
651	2/13/87	2/13/87	2/13/87	2/13/87							
657	2/13/87	2/13/87	tabled								
661	2/13/87	2/13/87	2/13/87			2/13/87					
677	2/16/87	2/16/87	2/18/87	tabled							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

In closing Rep. Jenkins stated he felt this was an important bill, and he urged the committee to give it a "do pass."

HEARING CLOSED ON HB 651.

HOUSE BILL NO. 661: REP. GARY SPAETH, District #84, stated the 310 permits, basically found in HB 310 and implemented controls at work about ten years ago that work in streambeds in the state, are recently trying to have some sort of review process that can be done with regard to the changing of these streambeds. He stated that review process was set up with the primary Conservation District supervisors involved in cooperation and association with the Department of Fish, Wildlife and Parks, and other interested parties. Obviously, irrigation ditches, companies or whatever, are very much involved in the streams, because they have to do with the water, and everything most likely went along smoothly. However, he was aware of some problems in the state, but it was basically interpreted that they historically had done different types of projects as far as diverting water in streams for the ditch that fills these areas. He stated they were not necessarily reviewed or did not need to be reviewed each time you did it. He stated if you are on a stream irrigating and the stream goes down as it does through the summer, you will have to constantly go up there during the irrigation season and make some adjustments as you go through, particularly some of the fast flowing mountainous type streams in his area, stating Rock Creek would be a good example. He stated the Attorney General came up with a ruling last spring that said of any of those types of diversions were not grandfathered like a lot of the districts were interpreted, and they would have to be regulated and obtain a permit. He stated it takes time to process one of these permits through the conservation districts, having the supervisors come out there and it could occur two or three times during a summer they must go out. This bill addresses that problem, so that those irrigation districts can continue to do pretty much what they have historically been doing out there. He stated he has brought these amendments as a recommendation from everyone involved, and it's what they feel would best work out to accommodate the irrigation companies and ditches in making sure they get their water out of the creek, while at the same time taking care of protecting the streambeds and stream management. He feels this is a prime example of what happens when the parties get together, and their problems can be worked out to the benefit and satisfaction of everyone, and he urged the passage of HB 661 with the proposed amendments.

PROPOSERS: RAY BECK representing the Montana Association Conservation District for the Department of Natural Resources stated DNRC does support the amendments offered by the sponsor.

LARRY ELLIS representing the Water Development Association and the Helena Valley Irrigation District stated both organizations stand in support of this bill.

JIM FLYNN, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 4). He stated the Natural Streambed and Land Preservation Act of 1965 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions. The Conservation Districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue with the progress being made in regulating streambed projects. He stated they support the amendments offered by the sponsor. He urged the committee to support HB 661, with the amendments.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated they do support the bill with the amendments offered by the sponsor. He pointed out to the committee, that this would also demand a title change.

STAN BRADSHAW representing Trout Unlimited stated their organization supports this bill and the amendments offered by the sponsor.

OPPONENTS: JEANNE KLOBNAK representing the Montana Wildlife Federation stated they do oppose this bill. She stated as written, HB 661 appears to circumvent any part or purpose of the Natural Streambed and Land Preservation Act. This part being the language that reads "to prohibit unauthorized projects." We are therefore, opposed, and stated the principle as written, contemplates providing a loophole which would in practice exclude projects from 75-7-111, and 75-7-112. Faulty planning of practices may therefore follow. She stated if the committee wishes to recommend passage of this bill, MWF urges them to do so only if they consider the amendments offered by the sponsor.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Spaeth stated he would hope the committee would see fit to pass this bill, because he feels it is a important and needed bill.

HEARING CLOSED ON HB 661.

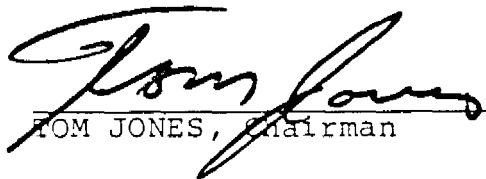
HOUSE BILL NO. 642: REP. GARY SPAETH, District #84, sponsor, stated this is at the request of the Department of Natural Resources.

REP. HARP then made a substitute motion to TABLE HB 657. Question was called, the motion CARRIED, with Reps. Harper, Miles and Cohen voting NO.

HOUSE BILL NO. 651: REP. SMITH moved HB 651 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 661: REP. RANEY moved HB 661 DO PASS. He then moved the amendments to the bill offered by Rep. Spaeth (Exhibit 8). Rep. Harper pointed out in addition to Rep. Spaeth's amendments, this would also demand a title change, and stated this could simply be included with Rep. Raney's original motion. Question was then called on the amendments, the motion CARRIED unanimously. REP. RANEY moved HB 661 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-2.

ADJOURNMENT: Being no further business to come before the committee, the meeting was adjourned at 2:47 p.m.


TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	✓		
CLYDE SMITH, VICE CHAIRMAN	✓		
KELLY ADDY	✓		
TOM ASAY	✓		
JOHN COBB	✓		
BEN COHEN	✓		
ED GRADY	✓		
JOHN HARP	✓		
HAL HARPER	✓		
MIKE KADAS	✓		
AL MEYERS	✓		
JOAN MILES	✓		
MARY LOU PETERSON	✓		
BOB RANEY	✓		
RANDE ROTH	✓		
ANGELA RUSSELL	✓		
BRUCE SIMON	✓		
BILL STRIZICH	✓		
STAFF: EQC HUGH ZACKHEIM			

STANDING COMMITTEE REPORT

FEBRUARY 16

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report SB 661

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, lines 5 through 7.

Strike: "AN" on line 5 through "IRRIGATION" on line 7

Insert: "MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES"

2. Page 2, lines 5 through 7.

Strike: "an" on line 5 through line 9 in its entirety

Insert: "Customary and historic maintenance and repair of existing irrigation facilities:

(i) that do not significantly alter or modify the stream in contravention of 75-7-102, as determined by the team; or
(ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district."

FIRST

reading copy (WHITE)
color

Amendments to HB 661

(b) Project does not include customary and historic maintenance and repair of existing irrigation facilities and alteration, modification, or diversion of a stream for the purpose of providing for irrigation if the alteration, modification, or diversion is consistent with the previous historical action or usage at the point of diversion.

(i) that does not significantly alter or modify the stream in contravention of 75-7-102, as determined by the team or

(ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at their option. Any modification to the plan must have prior approval of the district.

DATE 2-13-87

HB 661

HB 661
February 12, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue the progress being made in regulating streambed projects.

We support the amendments proposed by the sponsor. The language the committee has before it, coupled with the amendments offered by the sponsor, will serve to continue the progress that has been made to date.

If irrigation diversions are totally exempted, we fear the stream, the irrigator and adjacent landowners could be adversely affected. The results could be unstable streams, increased erosion, and reduced efforts to provide cost effective alternatives for irrigation methods.

The department supports HB 661, with amendment.

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEEBILL NO. HB 642, 651, 657, 661 DATE Feb. 13, 1987SPONSOR Jenkins, Rep. Spruth

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Spencer	657/661	657/661	
Billy E. Martin	U.S. Bureau of Reclamation		
James A. Rowling	U.S. Bureau of Reclamation		
GERGE OCHENSKI	MT. ENV. INF. CNTR	657, 651 661 w/AMENDS. ONLY!	
Don Thomas	Reptiles & Snake		
Deanne H. H. H.	MWIF	657, 661	642 661
Bob Stephens	Mr. Green House	651	
Mike Zimmerman	MPCO		657
Debi Grammer	MACD	651 661	
Ken Murphy	MT. Farmington	651	642 under amended
Rich Reis	MT Envir Info Center	657, 651	
J. L. Ellis	MT Water Res. & Plan. Assn. Helen Valley Irrig. Dist.	651, 661 642	657
Ron Schufeldt	Montana Water Development Assoc.	651, 661 642	657
Randy Buck	Conservation Dist. No. DNR	651, 661	
Scott Ross	Self	657	642
John A. H. H.	MT. Public Health Dept.	657	
Carol Maske	MT. Stockgrowers MT. Leather Shores	651 661	
Larry Fashbender	DNR C	642/651	
Russell D. Smolden	Washington Water Power Co.		657
Jerry Myper	Greenfield Ins. Dist.	6	657

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA STATE SENATE

NATURAL RESOURCES

50th LEGISLATURE

COMMITTEE MEMBERS: Senator Thomas F. Keating, Chairman
 Senator Cecil Weeding, Vice Chairman
 Senator John Anderson
 Senator Delwyn Gage
 Senator Mike Halligan
 Senator Sam Hofman
 Senator J.D. Lynch
 Senator Elmer Severson
 Senator Lawrence Stimatz
 Senator Larry Tveit
 Senator Mike Walker
 Senator William Yellowtail

STAFF ATTORNEY: Gail Kuntz

COMMITTEE SECRETARY: C. Nadine McCurdy

BOOK: 3 of 3

INCLUSIVE DATES: March 13, 1987, through April 22, 1987

CHAIRMAN--SEN. TOM KEATING
NORMAL SCHEDULE==> SITE: ROOM 405

DAYS: M-W-F

TIME: 1:00 P.M.

SECRETARY--NADINE MCCURDY

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0404	2/16	3/11		CONCUR		3/11
HARP, JOHN			PROVIDES A TIME LIMIT FOR CENTERLINE DECISIONS			
HB0408	2/10	3/09		CONCUR		3/9
IVERSON, DENNIS			PROVIDES THAT RESERVED WATER MUST BE USED IN THE BASIN OF DIVERSION			
HB0453	2/16	3/20		CONCUR		3/25
BRANDEWIE, RAY		3/25	AUTHORIZES DEPT OF COMMERCE TO REPRESENT TOURISM IN FLATHEAD LAKE MANAGEMENT			
HB0467	2/17	3/18		CONCUR		3/18
REAM, BOB			AMENDING HAZARDOUS WASTE ACT TO INCORPORATE CHANGES IN FEDERAL LAW			
HB0534	2/16	3/13		CONCUR		3/18
HANNAH, TOM		3/18 4/25	REVISING AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE			
HB0629	2/19	3/23		ADVERSE REPORT		3/25
REAM, BOB		3/25	GENERALLY REVISES THE METAL MINE RECLAMATION LAWS			
HB0642	3/02	3/23		CONCUR AS AMENDED		3/25
SPAETH, GARY		3/25	REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN WATER RESERVATIONS			
HB0645	3/02	3/09		CONCUR		3/16
BROWN, DAVE		3/16	CLARIFIES IMPACT PLAN SECTION OF HARD-ROCK MINING IMPACT ACT			
HB0651	2/19	3/18		CONCUR		3/18
JENKINS, LOREN			APPROP. RIGHT REDUCTION ASSOCIATED WITH LAND SET ASIDE IS NOT ABANDONMENT			
HB0661	2/23	3/23		CONCUR AS AMENDED		3/25
SPAETH, GARY		3/25	REDEFINE "PROJECT" TO CLARIFY DOES NOT INCLUDE DIVERSION FOR IRRIGATION			
HB0718	2/23	3/20		CONCUR AS AMENDED		3/23
HARPER, HAL		3/23	REALLOCATING ENVIRONMENTAL CONTINGENCY ACCT. TO ENV. QUALITY PROTECTION FUND			

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 642, but stated a concern with one portion of the bill on page 14, lines 20-25, which sets up two priority dates. A reservation allocates water availability to users and non-users. Mr. Flynn stated that the cumulative effect of many permits could interfere with reservations, then DNRC will have to sort out who gets the priority. He said that HB 642 sets up dual permitting, and recommended returning to the original language of the bill on page 14.

Don Jenni from Lewistown explained that he had written a letter to the committee expressing his opposition to the House's reinstating the repealer in section 21. He said that if 85-2-317, MAC, is not going to be repealed, then a change should be made increasing 3,000 acre feet of water to 4,000 acre feet of water in order to make the section consistent with other provisions of State law. Also, Mr. Jenni suggested that 85-2-317 (3) have the addition of "hydropower."

Stan Bradshaw, Trout Unlimited, agreed with Mr. Flynn's proposal of returning to original language on page 14.

OPPONENTS: There were no opponents.

Sen. Keating noted that although proponents supported the bill, they all had exceptions and opposed some section.

CLOSING: Rep. Spaeth said that he liked and supported Mr. Doney's amendment. Rep. Spaeth addressed the issue on page 14. The water reservation in the statute will not affect any permits, etc., prior to 1985. Rep. Spaeth stated that EIS on water reservations will deal with cumulative effects and will list all the existing users. If the DNRC is not given discretionary power which is "middle ground" approach, the only option of users would be to object to water reservations. Rep. Spaeth announced that he was committed to the language on page 14.

CONSIDERATION OF HOUSE BILL 661: Representative Spaeth, sponsor of the bill introduced the title: "An Act Further Defining the Term "Project" To Clarify that a Project Does Not Include Maintenance and Repair of Existing Irrigation Facilities. He said that the bill dealt with 310 Permits. The bill is very important to irrigation counties. Rep. Spaeth said the reason the bill was written was because for the first time since the 1975 bill, Natural Streambed and Land Preservation Act, it was interpreted by the Attorney General that historical usage had not been grandfathered out of the 1975 act.

As summer progresses, operations almost change weekly in putting in diversions, etc. Therefore, any ditch company who does any work in a stream would have to get a permit. There is a one-time emergency type of exemption. Rep. Spaeth said that in order to get a permit, a team of supervisors would have to go out and inspect the stream. HB 661 would re-establish the historical "grandfather" for the ditch companies and irrigators. Rep. Spaeth asked that the committee pass HB 661.

PROPOSERS: Ray Beck, Conservation Districts, DNRC, supported the bill. He said that the bill would cover the concerns and would preserve the "status quo."

Debbie Bremer, Montana Association of Conservation Districts, asked committee's concurrence of HB 661.

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 661 and submitted written testimony. (Exhibit 18)

Stan Brandshaw verbalized support of HB 661.

Jess Malone, Choteau, supported HB 661 and he said that farmers need the right to be able to do maintenance work in the areas of their diversions without undue limitations caused by the 310 permit system. In fact, Mr. Simon said his crops would depend on that. Water diversions have to be maintained and the job has to be timely because crops are dependent on opportune irrigation. Because of the time framework built into application for the permit, permits cannot be approved for three weeks. Therefore, Mr. Simon wholeheartedly supported HB 661. (Exhibit 19)

OPPOSERS: Ted Doney, Montana Water Development Association, said that he liked the bill as it was introduced in the House, but not as it was amended. He stated that an irrigator now has to either submit an annual plan or go to the district board and receive approval. Mr. Doney explained that there is no structure in a stream. Every spring farmers and ranchers are in a stream replacing boulders or logs. He said that it is too burdensome to the irrigator to project an annual plan or to gain approval every time maintenance work has to be done in a stream. Mr. Doney mentioned that he had drawn up some amendments that would be a reasonable compromise, but since it would entail rulemaking, he had reconsidered and did not submit them to the committee. However, Mr. Doney emphatically stated that he would prefer that HB 661 go back to the original language.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: In response to a question by Sen. Halligan, Mr. Doney said that according to the amended bill, replacing logs or boulders that would divert the stream would require advance approval of the supervisors. Mr. Beck said that somebody has to make a decision on an alteration.

It was mentioned that supervisors have legal responsibility to oversee activities in a spring.

It was determined that HB 661 language tries to preserve the status quo--irrigator gets one-time authority from the district to conduct an annual operation. Once authority is received from the district (unless there are dramatic changes) the irrigator would not have to go back to the district. Most irrigators know what they are going to have on an annual basis.

CLOSING: Rep. Spaeth stated that there is a definite need for HB 661. At the present time, "everything out there requires a permit. We are trying to get it back in the middle."

There being no more business before the committee, Sen. Keating adjourned the meeting at 3:10 p.m.


THOMAS F. KEATING, Chairman

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman	✓		
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson	✓		
Sen. Mike Walker	✓		

Each day attach to minutes.

COMMITTEE ON NB 629 Natural Resources

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Patricia Dr	El Dorado Co-operative Canal	661	X	
Jenni	Don Jenni	642	X	
Stor	Kreller Stor	629		X
W Dandale	1727 "A" St Butte Mt Metallurgical Services Inc	629		X
FLETCHER	L & C CHAPTER	629		X
Mr. [unclear]	USMAI INC	629		X
677 & Alabama	Butte Mt Rothmann Drilling	629		
Tim Baker	Self	629	X	
Tom Stephens	Self	629	X	
Mr. [unclear]	SELF	629	X	
Mr. [unclear]	Self La C Chapter MMA	629	as amended	
Mr. [unclear]	Self, 707 Dearborn Ave Kelso, 59601	629	as amended mktg	
Mr. [unclear]	SELF	629		X
Mr. [unclear]	Self	629	X	
Mr. [unclear]	THAR	642	X	
Mr. [unclear]	DVRC	642	X	
Mr. [unclear]	DHE S	760 777	X	
Mr. [unclear]	self	629	X	
Miss [unclear]	Dept of State Lands	629	X	
Mr. [unclear]	Mt. Mining Assn	629	X	
Mr. [unclear]	MT Assoc/Association Dist	661	X	
Mr. [unclear]	Tribal/Indian Energy	629	X	
Mr. [unclear]	Power & Light Co	629	X	
Mr. [unclear]	Mt. Chamber of Commerce	760 777	X	
Mr. [unclear]	MT Service Co	760 777	X	
Mr. [unclear]	MT. ENR. INF. CNTR	760 777 629		

16. PICAFER leave prepared statement with Secretary. X

HB 661
March 23, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the Stream Protection Act process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661 should continue the progress being made in regulating streambed projects.

The department recommends approval of HB 661.

EXHIBIT NO. 19 (cont)

DATE 3/23/87

BILL NO. 45661

NAME Jesse Malone Jr BILL NO. 661

ADDRESS RR 2 Box 204 Choteau, 59422 DATE 3/23/87

WHOM DO YOU REPRESENT Shelby Cooperative Cream Co.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

19
Date 3/23/87 (P)
BILL NO. HB 661

TESTIMONY - HB 661

MONTANA SENATE NATURAL RESOURCES COMMITTEE

MARCH 23, 1987.

I am Jesse Malone, Jr., Choteau, MT., Teton County. I am the president of the Eldorado Co-operative Canal Co., a user of Teton River water.

Teton county ranks fifth in Montana in the total value of agricultural products. Compared with other Montana counties, Teton county is an irrigated county. A significant amount of our production is directly contingent on irrigation. In our county there are three large areas of irrigated lands:

1. Greenfield - Fairfield bench
2. Bynum - Brady district
3. The upper Teton River water users.

The last two areas encompass thousands of acres and include over 200 farms. These farmers all receive water from the Teton River. All are directly affected by this legislation and the 310 permit system. More of them would have liked to have been here today, however, the storm and calving changed their plans. We favor House Bill 661.

The upper Teton River is unique in its moving river bed. The water action is constantly moving the gravel that comprises the waterway. Periodically we have to remove the gravel that has been deposited in front of and in our water diversion facilities. It is particularly critical when there is an

unexpected and sudden flood of water that moves gravel into our facilities in late May or June. We have to maintain our water diversions. And the job has to be timely, because the year's crops are dependent on opportune irrigation.

That is why we have concerns about this legislation and the requirements pertaining to the 310 permit. Because of the time framework built into the application for the permit, more likely than not, the permit isn't approved for three weeks. The team members, charged with the responsibility of inspecting the 40 or so diversions on the Teton, find it a burdensome task and it is an unnecessary inconvenience when their own farms need attention. Our crops can't wait three weeks for irrigation water. We need the right to be able to do maintenance work in the area of our diversions, without undue limitations caused by the 310 permit system. We need the maintenance of the diversions defined as non-projects. We are in favor of House Bill 661. Our crops depend upon it. To a degree agricultural production in Teton County depends upon it.

Sen. Keating inquired whether there was question about the word "combined" in the bill and both Ted Doney and Rep. Spaeth replied there was no problem with the word.

Sen. Keating mentioned that on page 21 of the bill, section 10 was a repealer of 85-2-317 MCA. Sen. Keating related the fact that DNRC had a sufficient handle on permits, process, and applications, and he did not understand why citizenry should be required to wait two years to receive approval to use 3,000 acre feet of water from Legislature when the department could easily approve.

Sen. Halligan made a motion that section 10 be reinstated to repeal the requirement that applicants must go before the legislature for use of more than 3,000 acre feet of water. Sen. Lynch stated that the requirement had only been in effect since 1983 and the system was working well. Roll Call Vote was taken on the motion and the motion FAILED.

Sen. Lynch moved that HB 642 AS AMENDED, BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 661: Sen. Keating told the committee that HB 661 was redefining "project." Sen. Keating mentioned that at the March 25, 1987, hearing the Water Development Board opposed HB 661. However, Rep. Spaeth explained that in the interim, all parties had come to an agreement and amendments had been made. Copies of the amendments were distributed to committee members, and Rep. Spaeth said the amendments had been approved by the Water Board, Department of Fish and Wildlife, as well as the Supervisors. (Exhibit 2) Rep. Spaeth recommended that the amendments be adopted and added that there was a need for a Statement of Intent (Exhibit 3) and a couple of technical amendments that are listed below.

1. Page 1, line 10
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
2. Page 1, line 10
Following: "75-7-103"
Insert: "AND 75-7-117"

Sen. Lynch moved the amendments, and motion CARRIED unanimously. Sen. Walker moved that the Statement of Intent DO PASS, and motion CARRIED unanimously.

Sen. Walker then moved that HB 661 AS AMENDED with the Statement of Intent BE CONCURRED IN. Motion CARRIED unanimously.

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/1

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman			✓
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson	✓		
Sen. Mike Walker	✓		

Each day attach to minutes.

by

CONSERVATION DISTRICTS DIVISION

Third Reading Copy

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE March 25, 1987

BILL NO. 661

1. Page 2, line 15 and 16
Following: 75-7-102,
Strike: "AS DETERMINED BY THE TEAM SUPERVISORS"
2. Page 2, line 17
Strike: AN ANNUAL PLAN OF
Insert: A PLAN OF ANNUAL
3. Page 3
Following: line 5
Insert: "Section 2. Section 75-7-117, is amended to read:"

"75-7-117. Rules--minimum standards. (1) By July 17 1975,

the The board of natural resources and conservation, after
consultation with the association of conservation districts,
shall adopt, and may from time to time revise, rules setting
minimum standards and guidelines for the purpose of this part.

(2) By January 17 1976, the The supervisors of each
district shall adopt, and may from time to time revise, by
resolution after a public hearing rules setting standards and
guidelines for projects, and exclusions, within their district
which shall meet or exceed, or are not covered by, the minimum
standards set by the board under subsection (1)."

Renumber: subsequent sections.

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE March 25, 1987

BILL NO. HB 661

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify that the board of natural resources and conservation and boards of supervisors of conservation districts may revise their rules as necessary. Section 2 clarifies that boards of supervisors are authorized to establish standards and guidelines for projects and exclusions within their districts for matters not covered by the minimum standards and guidelines established by the board of natural resources and conservation. Section 2 also provides authorization to adopt rules identifying repair and maintenance activities that are not "projects" as that term is defined in 75-7-103 because the activities do not significantly alter a stream. Section 2 further authorizes rulemaking to identify the following: 1) categories of information that should be included in plans of annual operation; 2) procedures for filing the plans; and 3) procedures for evaluation and board of supervisor decisions concerning the plans.

STANDING COMMITTEE REPORT

MARCH 25

37

19.....

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 661

THIRD reading copy (BLUE)
color

REDEFINE "PROJECT" TO CLARIFY DOES NOT INCLUDE DIVERSION FOR IRRIGATION

SPAETH (SECK)

HOUSE BILL

661

Respectfully report as follows: That..... No.....

BE AMENDED AS FOLLOWS:

1. Page 1, line 10.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

2. Page 1, line 10.

Following: "75-7-103"

Insert: "AND 75-7-117"

3. Page 2, lines 15 and 16.

Following: "75-7-102"

Strike: "AS DETERMINED BY THE TEAM SUPERVISORS"

4. Page 2, line 17.

Strike: "AN ANNUAL PLAN OF"

Insert: "a plan of annual"

5. Page 3, following line 5.

Insert: "Section 2. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules--minimum standards. (1) By-July-17-1975-the
The board of natural resources and conservation, after consultation
with the association of conservation districts, shall adopt, and may
from time to time revise, rules setting minimum standards and guidelines
for the purpose of this part.

(2) By-January-7-17-1976-the The supervisors of each district
shall adopt, and may from time to time revise, by resolution after a
public hearing rules setting standards and guidelines for projects
and exclusions, within their districts which shall meet or exceed, or
are not covered by the minimum standards set by the board
under subsection (1)."

xxxx-x
DO PASS

xxxxxxx
Re-number: subsequent sections.

AND AS AMENDED,
BE CONCURRED IN
STATEMENT OF INTENT ADOPTED AND ATTACHED

SENATOR THOMAS F. KEATING, Chairman.